U.S. Department of Labor

Office of Administrative Law Judges
O'Neill Federal Building - Room 411
10 Causeway Street
Boston, MA 02222

(617) 223-9355
(617) 223-4254 (FAX)

Issue Date: 15 June 2007

CASE NO.: 2006-LHC-00223

OWCP NO.: 01-160275

In the Matter of

K.S.[1]
Claimant

v.

ELECTRIC BOAT CORPORATION
Employer / Self-Insurer

Appearances:

Lance G. Proctor (Lance G. Proctor, LLC), Westerly,
Rhode Island, for the Claimant

Edward W. Murphy (Morrison Mahoney, LLP),
Boston, Massachusetts, for the Employer

Before: Daniel F. Sutton
Administrative Law Judge

DECISION AND ORDER AWARDING BENEFITS

I. Statement of the Case

This matter involves a claim for compensation benefits under the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. § 901 et seq. (the "Act") filed by the Claimant, K.S. ("Claimant") against the Employer, Electric Boat Corporation ("Employer" or "Electric Boat"). In his claim, the Claimant seeks an award of permanent partial disability compensation and medical care for loss of upper extremity function allegedly caused by his use of vibratory tools and repetitive use of his upper extremities in the course of his employment at Electric Boat. The parties were unable to arrive at a voluntary resolution during informal

[1] In accordance with Claimant Name Policy which became effective on August 1, 2006, the Office of Administrative Law Judges uses a claimant's initials in published decisions in lieu of the claimant's full name. *See* Chief ALJ Memorandum dated July 3, 2006 available at http://www.oalj.dol.gov/PUBLIC/RULES_OF_PRACTICE/REFERENCES/MISCELLANEOUS/CLAIMANT_NAME_POLICY_PUBLIC_ANNOUNCEMENT.PDF.

proceedings before the Office of Workers' Compensation Programs ("OWCP"), and the District Director, OWCP transferred the case to the Office of Administrative Law Judges ("OALJ") for a formal hearing pursuant to section 19(d) of the Act. 33 U.S.C. § 919(d); 20 C.F.R. §§ 702.311 – 702.317.[2]

On January 20, 2006, the Employer filed a Motion for Summary Decision, alleging that there are no genuine issues of material fact and that it is entitled to judgment as a matter of law that (1) the cause of the Claimant's permanent partial impairment, (2) the Claimant's performed similar repetitive work in subsequent maritime employment, and (3) the indemnity portion of the Claimant's claim is untimely under Section 13 of the Act. ALJX 7. On January 27, 2006, the Claimant filed an objection to the Employer's Motion for Summary Decision and a Motion to Extend Period of Time for Discovery. ALJX 8. The Claimant contended that summary decision was premature because depositions had been scheduled to determine facts related to causation and subsequent employment. The Employer submitted the deposition of the Claimant and a medical report by Arnold-Peter C. Weiss, MD while the motion for summary decision was pending. The Employer's motion for summary decision was denied by order issued on February 21, 2006 based on findings that the pleadings indicated the presence of genuine issues of material fact warranting an evidentiary hearing. ALJX 14.

A formal hearing was held in Providence, Rhode Island on March 24, 2006 at which time the Claimant appeared represented by counsel, and an appearance was made on behalf of the Employer. The Hearing Transcript, totaling 87 pages, is referenced as ("HT"). At the hearing, the Claimant testified, and the Employer admitted documentary evidence ("EX") 1-13. TR at 15. A stipulation form executed by both parties was submitted as JX 1. TR at 12. At the close of the hearing, leave was granted to permit the parties to submit evidence on the issue of the Claimant's average weekly wage and additional medical records. TR at 84.[3] The parties were also granted time to file post hearing briefs, which were timely filed on behalf of both parties. The record is now closed.

After consideration of the evidence and the parties' positions, I conclude that the Claimant has established that he is entitled to an award of permanent partial disability compensation for carpal tunnel syndrome related to his former employment at Electric Boat, medical care for this condition, and attorney's fees. My findings of fact and conclusions of law are set forth below.

II. Stipulations and Issues Presented

The parties offered the following stipulations during the hearing, which were submitted as JX 1:

1. The Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. § 901 et seq. applies to this claim.

[2] Regulations for the administration of the Act promulgated by the Secretary of Labor are found at 20 C.F.R. Part 702.

[3] No additional evidence was offered post-hearing.

2. The alleged injury occurred on July 6, 1981 (termination date).

3. The alleged injury occurred at North Kingston, Rhode Island.

4. There was an Employer/Employee relationship at the time of the alleged injuries.

5. The Notice of Controversion was timely filed.

6. The Informal Conference was held on September 21, 2005.

7. The worker's average weekly wage at the time of injury was $197.64.[4]

8. No compensation has been paid.

9. No medical benefits have been paid.

10. Without waiving the maximum medical improvement issue, the Employer will agree to Dr. Meyer's rating of 3% left hand impairment and 6% right hand impairment if the Court finds the Claimant to be at the point of maximum medical improvement.

JX 1. The issues to be decided are (1) whether the Claimant gave timely notice and timely filed his claim, (2) whether the Claimant's carpal tunnel syndrome is causally related to his employment at Electric Boat, (3) whether the Claimant has reached a point of maximum medical improvement, (4) whether Electric Boat is liable as the Claimant's last maritime employer for any benefits awarded under the Act, and (5) whether the costs of this proceeding can be assessed against the Claimant pursuant to 33 U.S.C. § 926.

III. Findings of Fact and Conclusions of Law

A. Background

The Claimant is 46 years old and was employed by the Employer for one year. EX 12 at 4; EX 4. He was hired by the Employer as a welder/grinder on June 30, 1980. TR 23. The Claimant's main duties consisted of welding, grinding and gouging. TR at 11-12. Pneumatic tools, which vibrate due to their use of compressed air, were used while grinding, deburring and gouging. *Id*. The Claimant testified that an eight-hour shift was typically broken down into three and a half hours of welding and four hours of grinding, gouging, and deburring. *Id.* The pneumatic tools that the Claimant used were an air-fed deburring tool which weighed about four or five pounds, a Whirlybird 500 which weighed ten to fifteen pounds and required a steady grip in the right hand, and a carbon arc gouger which weighed three to four pounds. TR 26-28. Other non-vibratory tools were used for welding, and other tools were used for grinding on an infrequent basis. *Id*. The pneumatic tools were used approximately four hours a day every day

[4] The parties confirmed their stipulation on the Claimant's average weekly wage during a status conference on April 10, 2006.

of the week. TR at 28. The Claimant wore gloves while using the pneumatic tools, but the gloves were not anti-vibration gloves. TR at 26-28.

The Claimant testified that his hands became symptomatic after six months of employment at Electric Boat. TR at 28-29. He said that he began to experience numbness and occasional needles and pins, as if his hands had "fallen asleep," which occurred at night and sometimes made it difficult to fall asleep. TR at 29. The symptoms occurred in the whole hand, particularly the fingers and were worse in the right hand. EX 12 at 20. The symptoms worsened, but the Claimant testified that he did not seek any medical treatment because he assumed he was just working too hard and he did not want to cause any trouble. TR at 29-30. He took Tylenol but never reported the problems to the Electric Boat infirmary. *Id*. The Claimant testified that he did not know that the tools he was using were actually causing the symptoms. TR at 63-64. He did not get the symptoms until he was home for the night. *Id*. Thus, the Claimant equated his pain to work in general rather than the pneumatic tools. See TR at 63-64, 78-79, 82-83. The Claimant testified that grinding would make the symptoms worse. EX 12 at 21-22. The symptoms would lessen over the weekend when the Claimant would have time off. *Id*. The Claimant's employment was terminated on July 6, 1981 because he did not have a vehicle and had difficulty arriving at work on time. TR 31-32. During his employment at Electric Boat, he did not miss any work due to his symptoms. TR at 61.

The Claimant moved to Pontiac, Michigan in 1981 after his termination from Electric Boat. TR at 32. He began working for a security company that did not require the use of any hand tools. *Id*. The Claimant held this position until 1985, during which time the symptoms continued despite his lack of pneumatic or manual tool use. TR at 33. However, the Claimant testified that the pain was less severe. EX 12 at 25. The Claimant's next employment was with Decks and Docks as a boat cleaner. TR at 33-34. The Claimant testified that while employed at Decks and Docks, he worked on only pleasure crafts in the 16 to 28 foot range. TR at 60.[5] This position required the use of hand tools such as screwdrivers and wrenches, and power tools such as cordless drills which caused vibration. TR at 34. There was also some heavy lifting involved. TR at 66. The Claimant testified that his hand symptoms continued at the same intensity and he did not seek any medical treatment. TR at 34-35. The Claimant next worked for K & K Mechanical using basic hand tools that did not cause vibration. TR at 35. The symptoms continued at the same intensity. TR at 35-36. The Claimant returned to Decks and Docks in 1990 doing the same type of work and using the same tools. TR at 36. During this time the symptoms did not change. *Id*.

The Claimant returned to Rhode Island in 1993 and was hired as a laundry attendant at Slater Health Center. TR at 36-37. At some point he worked as a janitor, and after four years he became a CNA and began working with patients. TR at 37. The janitor position in the maintenance department may have required the use of hand tools and the laundry attendant position required some heavy lifting.[6] TR at 77, 38. While still working at the health center, the

[5] "[I]ndividuals employed to build, repair, or dismantle any recreational vessel under sixty-five feet in length" are excluded from the Act's definition of an employee. 33 U.S.C. § 902(3)(F).

[6] There is a discrepancy in the Claimant's testimony as to whether he used hand tools at Slater Health Center. TR at 38, 77.

Claimant began working at Twin City Marine. *Id*. The Claimant is currently still employed at Twin City Marine as a boat mechanic. TR at 39. The Claimant testified that he works on pleasure crafts, the largest being 33 feet. TR at 40. He mainly uses hand tools and uses air-fed tools occasionally. TR at 39-40. He does not wear anti-vibration gloves. TR at 40. Although he maintained that there are no tools that currently aggravate his symptoms, the Claimant testified that he continues to have symptoms three or four nights a week. TR at 41.

The Claimant filed a workers' compensation claim against Twin City Marine in 2003 for an injury to his right elbow which occurred while he was shoveling snow. TR at 57, 76. The Claimant testified that he does not recall the date that the claim was filed or the name of the physician who treated him for this injury. TR at 57-58. He also does not recall if he received compensation benefits for the injury.[7] *Id*. He received physical therapy for two to three weeks and testified that his treatment was paid for by workers' compensation insurance. *Id*. However, he made inconsistent statements regarding whether he lost any work time as a result of the elbow injury. TR 58, 80. The Claimant testified that the elbow-related symptoms eventually got better. TR 58-59.

The Claimant saw Dr. Campanile, his family doctor, in 2000 for an annual checkup. TR at 41-42. The Claimant testified that he mentioned his hand symptoms but did not tell Dr. Campanile how long his symptoms had been present. TR at 44. The Claimant said that Dr. Campanile suggested that he try Tylenol or Advil which he was already taking. Id.[8]

The Claimant was referred by his brother to Dr. John Meyer at the UCONN Medical Group and first saw him on June 10, 2004. The Claimant testified that he told Dr. Meyer that the symptoms began in late 1980 and worsened in 2000, but at that time he did not remember exactly when he worked at Electric Boat. TR at 45-47. The history taken by Dr. Meyer notes that the Claimant was a grinder employed at Electric Boat for two and a half to three years until 1980. The report states that "[Claimant] indicates that he began to have problems in his hands approximately 20 years ago, that have persisted, and slightly worsened over this time." EX 5 at 1. However, at the time of his first visit with Dr. Meyer, he also completed an intake questionnaire on which he indicated that his hand symptoms began in 2000. EX 9 at 126. At the hearing, he testified that he interpreted the question as asking when he first sought treatment, not when the symptoms actually manifested. TR at 49. Based on my observations of the Claimant's demeanor under examination and my review of the questionnaire, I find that the Claimant's explanation is credible and that his responses on the questionnaire do not require that his testimony that he had hand symptoms while working as Electric Boat be discounted as lacking credulity. Rather, examination of the record supports a finding that the Claimant was confused in completing Dr. Meyer's intake questionnaire. In question 1, he indicated that he did not have discomfort in his neck or shoulders, but listed a date of 2000 despite checking the line labeled "no." EX 9 at 126. In question 2, he selected types of pain for the shoulders and neck despite

---

[7] The Claimant testified that his treatments were paid for by workers' compensation insurance, but he did not indicate whether he was compensated for lost wages. TR at 57-58, 70.

[8] The medical records of Dr. Campanile, which are in evidence as in EX 13, do not contain any mention of the Claimant's hands.

answering in question 1 that he did not experience discomfort in these areas, and he again listed a date for types of pain that he indicated he was not experiencing. *Id*. In question 3, which refers to problems of the hands and wrists, there are again dates listed for symptoms that the Claimant had previously indicated that he does not have. *Id*. Question 4 asks the patient to shade, on diagrams, places on the shoulders, elbows, and hands where there is discomfort. *Id*. In response to Question 5 ("When did you first have the problem?"), the Claimant answered June of 2000. Id. This question, however, does not indicate which of questions 1-4 that it is referring to, and Dr. Meyer acknowledged that the intake form is not clear. EX 9 at 28-29. For these reasons, I credit the Claimant's testimony that his hand symptoms date from the time of his employment at Electric Boat and that he misunderstood the questions on Dr. Meyer's intake form when he indicated that his symptoms first arose in 2000.[9]

The Claimant was also involved in a motorcycle accident in 2000 which required surgery on his femur and knee, and the resetting of a finger, although he does not currently suffer from symptoms related to this accident. TR at 56-57.

During the initial visit on June 10, 2004 , Dr. Meyer conducted various tests and gave a diagnosis of CTS. TR at 51. Dr. Meyer prescribed hand splints and requested that the Claimant return for more tests. TR at 50. Dr. Meyer's records show that the Claimant was seen on September 21, 2004 and again on April 7, 2005. EX 6. The Claimant testified that Dr. Meyer told him after reviewing the test results that that he would need surgery and that he would refer him to a surgeon. TR at 52-53. However, since Dr. Meyer's reports contain no surgical recommendation, it appears that the Claimant's recollection is inaccurate on this point. See EX 5; EX 6; EX 7; EX 9.[10] In the more likely scenario, Dr. Meyer may have mentioned to the Claimant that surgery is sometimes performed in CTS cases and that he does not perform CTS surgery. The Employer arranged for the Claimant to be examined by Dr. Arnold-Peter Weiss, who concluded that the Claimant has CTS and requires surgery on both hands. TR at 55-54. This examination occurred on August 16, 2005. EX 1.

Currently the Claimant is employed at Twin City Marine where he only uses basic hand tools. TR at 55. While he was employed at Electric Boat, the symptoms were present in the whole hand, wrist, and fingers at night. EX 12 at 41. The symptoms are now only in the fingers of both hands are present at night and in the morning. TR at 56; EX 12 at 41. He wears hand splints at night and when he is idle at home. TR at 56. The Claimant was involved in a motorcycle accident in 2000 which required surgery on his femur and knee, and the resetting of a finger, although he does not currently suffer from symptoms related to this accident. TR at 56-57.

---

[9] It is noted that Dr. Weiss seems to contradict the Claimant in his February 17, 2006 letter wherein he states that "[the Claimant] was extremely accurate and clear on his intake forms [*i.e*., the forms completed for Dr. Meyer] as to whether or not the symptoms began and repeated these assertions to me verbally." EX 10 at 3. However, having already credited the Claimant's testimony on when his hand symptoms first appeared, and noting that his account is not materially inconsistent with the history that he gave to Dr. Meyer in June of 2004 (EX 5 at 1), I find that this one statement from Dr. Weiss, who did not appear as a witness, does not outweigh the Claimant's credible, albeit imprecise, testimony.

[10] Indeed, Dr. Meyer wrote in an April 7, 2005 report that surgery was not necessary since the Claimant's condition was stable. EX 7 at 1-2.

B. Records and Opinion of Dr. Meyer

Dr. John Meyer is an Assistant Professor at the University of Connecticut Health Center. EX 9 at 4. He is board-certified in occupational medicine and completed his occupational medicine residency training at the Boston University Medical Center. EX 9 at 4-5. Dr. Meyer does not perform CTS surgery in his current practice and is not licensed to do so, but he assisted with the procedure during his residency training. EX 9 at 39. He co-authored a publication entitled Occupational Disease in Connecticut in 2002 which included a study of CTS cases among shipyard workers. Id. at 49.

Dr. Meyer first examined the Claimant on June 10, 2004. EX 5 at 1. In a medical report documenting that visit, Dr. Meyer indicated that the Claimant worked at Electric Boat for two and a half to three years, which has now been shown to be incorrect. *Id*.; EX 4. The report notes the Claimant's tool use at Electric Boat, Decks and Docks, and Twin City Marine, but does not indicate that hand tools were used at Slater Health Center. EX 5 at 1. The Claimant informed Dr. Meyer that he began to have problems with his hands about 20 years earlier and that the problems had persisted and slightly worsened over time. *Id*.[11] Dr Meyer noted that the Claimant was exhibiting symptoms and findings consistent with bilateral CTS, and that he has a long history of exposure that would be responsible on a cumulative basis beginning with his employment at Electric Boat. EX 5 at 2; EX 9 at 24. However, Dr Meyer testified during his deposition that there is no way to apportion degrees of impairment to each of the Claimant's periods of employment. EX 9 at 20-23. Dr. Meyer felt that further testing was required, but he began treating the Claimant presumptively for CTS and prescribed hand splints. EX 5 at 2.

Dr. Meyer saw the Claimant on September 21, 2004 (EX 6) and again on April 7, 2005. EX 7. The results of nerve conduction testing indicated evidence of right-sided median neuropathy consistent with CTS.[12] *Id*. at 1. Dr. Meyer noted that the Claimant's condition had stabilized over the last year and noted that surgery was not necessary. EX 7 1-2. Dr. Meyer concluded that the Claimant had reached a point of maximum medical improvement and assessed the impairment ratings as six percent of the right hand and three percent of the left hand. EX 7 at 2.

At his deposition, Dr. Meyer reviewed his records and confirmed from his notes that the Claimant had related an oral history of initially experiencing problems with his hands approximately 20 years prior to 2004 when he was first seen in Dr. Meyer's office. EX 9 at 9. Dr. Meyer testified that by "doing the math" the onset of symptoms in approximately 1984 would post-date the Claimant's employment at Electric Boat, but he stated that CTS is a cumulative trauma disorder brought on by longstanding and cumulative exposures so that it is his opinion that the Claimant's exposure at Electric Boat (*i.e*., welding for half a day and grinding

[11] Dr. Meyer testified at his deposition that he interpreted "approximately twenty years" to mean some time in 1984, after the Claimant had stopped working at Electric Boat. EX 9 at 9.

[12] Although there was no clearly diagnostic test for the left side, many individuals have modest symptoms despite normal tests. Ex 9 at 17.

for half a day for approximately two and one half years) was a contributing factor in the development of CTS. Id. at 9-10, 20-24.[13] Dr. Meyer further stated that that there is no way to apportion degrees of impairment to each of the Claimant's periods of employment. *Id*. He testified that once splints were prescribed, continuing manual work would not interfere with the treatment provided that there was some reduction in hand use. *Id*. at 16. Dr. Meyer further testified that his diagnosis is mild right-sided CTS which was confirmed by electrodiagnostic testing and clinical, but not electrodiagnostic evidence, of CTS on the left. *Id*. at 17-18, 37-38. He explained that the absence of a positive electrodiagnostic test result on the left is not unusual and that many individuals have modest symptoms despite normal tests. *Id*. at 17. Dr. Meyer continued that it is his opinion that the Claimant does not require surgery and that his CTS has reached a point of maximum medical improvement with six percent right and three percent left impairment ratings based on the criteria of the American Medical Association Guides to the Evaluation of Permanent Impairment, Fifth Edition. *Id*. at 18-19, 38.

On cross-examination by the Employer's attorney, Dr. Meyer agreed that the Claimant's responses on the intake questionnaire (i.e., that he has symptoms in his hands and arms since 2000) were inconsistent with the oral history that he obtained from the Claimant. EX 9 at 27-29. However, on later redirect examination, he stated that the Claimant's responses on the intake questionnaire that his symptoms developed in 2000 do not change his opinion that trauma suffered while the Claimant was employed at Electric Boat contributed to his CTS since he based his opinions on an oral history which indicated that symptoms occurred long before 2000. *Id*. at 46. Dr. Meyer also stated that based on the history that the Claimant provided, it was his assumption that the Claimant worked at Electric Boat for two and one half years and that his workdays were split equally between grinding and welding. *Id*. at 30-31. Dr. Meyer described the risks of developing CTS to be, among other factors, an occupational association with repetitive, forceful work with the hands, gripping, and exposure to vibration. *Id*. at 32-33, 40. He disagreed that the amount of time that Claimant's period of employment at Electric Boat was too short for development of CTS, again pointing out that CTS develops from cumulative trauma across an individual's working life. *Id*. at 34-35. He testified that it generally takes about one year of full-time "hand-intensive" work to develop CTS, and he added that it is his understanding that the Claimant used his hands to manipulate welding tools when he was not operating grinders. *Id*. at 39-41.

C. Records and Opinion of Dr. Weiss

Dr. Arnold-Peter Weiss is currently the Assistant Dean of Medicine (Admissions) at Brown University in Providence, Rhode Island. EX 2 at 1. He completed general surgical and orthopedic surgical residencies at The Johns Hopkins Hospital and a hand surgery fellowship at The Indiana Hand Center. *Id*. Dr. Weiss currently performs over 600 CTS surgeries per year, is

[13] The Employer's attorney properly objected to some of the questions that elicited this testimony from Dr. Meyer. Although I find the question on page 9 of the deposition transcript ("Would it be your opinion that that might also encompass his years of employment from 1978 to 1980 at Quonset Point?") to be impermissible, I have allowed Dr. Meyer's answer as it quite clearly was not improperly influenced by the question. EX 9 at 9. Indeed, the Employer's attorney elicited the same testimony on cross-examination, in the process drawing an objection from opposing counsel which is overruled. *Id.* at 37. The Employer's remaining objections are overruled.

the editor of the largest peer-reviewed medical journal related to hand problems, and has published over 130 peer-reviewed articles. EX 10 at 1.

Dr. Weiss saw the Claimant on August 16, 2005. EX 1 at 1. He noted that the Claimant was experiencing numbness and tingling which impaired his sleep and required shaking to regain sensation. *Id*. He also concluded, contrary to Dr. Meyer's observation, that the splints are not currently helping. *Id*. Dr. Weiss diagnosed the Claimant with bilateral CTS, and he stated that carpal tunnel release surgery would be required in the future. EX 1 at 2. Dr. Weiss concluded that the Claimant's CTS started about three or four years ago and is related to his work activities as a mechanic. *Id.* He did not "find any significant relationship to his work activities at Electric Boat which were over 24 yeas ago since he stopped these work activities." *Id*.

Dr. Weiss supplemented his medical report in a letter to the Employer's attorney dated February 17, 2006 in which he notes that he had reviewed the depositions of the Claimant and Dr. Meyer, the records received from Dr. Meyer including the intake forms from the Claimant's initial visit, the Motion for Summary Decision, and the objection to the Motion for Summary Decision. EX 10 at 1. In this letter, Dr. Weiss stated that the facts of the case are simple in that the Claimant reported in Dr. Meyer's intake form that he first began to experience symptoms in 2000, and there is no documentation of any symptoms prior to that time. *Id*. at 2. On these factual assumptions, Dr. Weiss stated that there is "not a shred of medical evidence in the literature to support a patient or physician stating a causal relationship" to an occupational exposure that terminated 19 years prior to the first report of symptoms. *Id*. Dr. Weiss stated that he is very familiar with the work of welders and grinders at Electric Boat, and he wrote that "there is little argument that the work is hard, heavy, requiring extensive force and using extensive vibratory and high pressure tools." *Id*. Nevertheless, he stated that these work activities do not necessarily cause CTS, and he reiterated his opinion that based on the written record, as distinguished from the Claimant's oral history which he characterized as "altered," that the Claimant's CTS is not causally related to his past employment at Electric Boat. Id. 2-3. In conclusion, Dr. Weiss stated that "[t]he fact that the patient's memory has now changed is an uncompelling argument to me given the legal nature and fiscal issues involved with this particular case." *Id*. at 3.

D. Timeliness

The Employer makes two arguments regarding timeliness. First, the Employer argues that the Claimant failed to give the Employer timely notice of his injury pursuant to section 12. Second, the Employer argues that the claim was not timely filed pursuant to section 13. Regarding the Employer's first argument, the Federal Longshore Act at section 12(a) in pertinent part provides:

> Notice of an injury or death . . . shall be given within thirty days after the date of such injury or death, or thirty days after the employee or beneficiary is aware, or in the exercise of reasonable diligence or by reason of medical advice should have been aware, of a relationship between the injury or death and the employment except in the case of an occupational disease which does not immediately result in a disability or death, such notice shall be given within one year after the employee

> of claimant becomes aware, or in the exercise of reasonable diligence or by reason of medical advice should have been aware, of the relationship between the employment, the disease, and the death or disability.

33 U.S.C. § 912(a). Regarding the Employer's second argument, section 13(a) of the Act bars a claim for compensation unless it is filed within one year of the injury or death or, in cases where there has been a voluntary payment of compensation, within one year after the date of the last payment. 33 U.S.C. § 913(a). Section 13(a) further provides that "the time for filing a claim shall not begin to run until the employee or beneficiary is aware, or by the exercise of reasonable diligence should have been aware, of the relationship between the injury or death and the employment." *Id*. The Act extends the filing limitation period in cases involving occupational diseases. In this regard, section 13(b) provides that a claim for compensation for disability or death "due to an occupational disease which does not immediately result in such death or disability shall be timely if filed within two years" after the employee has the requisite awareness of the link between the employment, the disease, and the disability. 33 U.S.C. § 913(b).

Congress has not defined "occupational disease" for the purposes of the Act. However, the generally accepted definition is "any disease arising out of exposure to harmful conditions of the employment, when those conditions are present in a peculiar or increased degree by comparison with employment generally." *Gencarelle* v. *General Dynamics Corp*., 892 F.2d 173, 176 (2d Cir. 1989) (quoting 1B A. Larson, the Law of Workmen's Compensation § 41.00, at 7-353). Applying this definition, the Benefits Review Board ("BRB") has held that CTS is an occupational disease that extends the statute of limitations in sections 12 and 13. *Carlisle* v. *Bunge Corp*., 33 BRBS 133, 136-138 (1999), aff'd sub nom. *Bunge Corp*. v. *Carlisle*, 227 F.3d 934 (7th Cir. 2000). *See* also *Leathers* v. *Bath Iron Works and Birmingham Fire Insurance*, 135 F.3d 78, 79-80 (1st Cir. 1998) (affirming ALJ's finding that CTS is an occupational disease for purposes of calculating the claimant's average weekly wage under section 10(i) of the Act); *Vater* v. *HB Group*, 667 A.2d 283 (R.I. 1995) (holding that CTS is an occupational disease pursuant to R.I. Gen. Laws §§ 28-34-1 and 28-34-2 (1986)). Therefore, I find that the claim in this matter is subject to the occupational disease timeliness requirements established by sections 12(a) and 13(b) of the Act.

The Employer contends that because the Claimant alleges he experienced symptoms during his employment at Electric Boat and knew that they were related to his general employment duties, he was required to file his claim in 1981. Resp't Br. 10-11. The Claimant argues that he has not been disabled and as a result Sections 12 and 13 do not apply. Cl. Br. 13. The Claimant asserts that in cases of occupational disease, a claimant has two years to file, and an injury or disability cannot occur until there has been an impairment of earning power. Cl. Br. 14 (citing *Bath Iron Works Corp*. v. *James P. Galen and Director, Office of Workers' Compensation Programs*, 604 F.2d 583 (1st Cir. 1979); *Stancil* v. *Massey*, 141 U.S. App. D.C. 120, 436 F.2d 274, 278-279, (D.C. Cir. 1970).

The Claimant correctly points out that the Court of Appeals for the First Circuit, in whose jurisdiction this claim arises, has held that the notice time limits in section 12(a) of the Act do not begin to run until the claimant is aware or reasonably should have been aware that he had a work-related condition that would impair his earning capacity. *Bath Iron Works Corp*. v. *Galen*, 605 F.2d 583, 585 (1st Cir.1979). The courts have similarly held that the filing limitation periods in section 13 begin to run "only after the employee becomes aware or reasonably should have become aware of the full character, extent, and impact of the injury," and they "generally have held that the employee is aware of the full character, extent, and impact of the injury when the employee knows or should know that the injury is work-related, and knows or should know that the injury will impair the employee's earning power." *Paducah Marine Ways* v. *Thompson*, 82 F.3d 130, 134 (6th Cir. 1996), citing *Abel* v. *Director, Office of Workers Compensation Programs*, 932 F.2d 819, 821 (9th Cir.1991); *Newport News Shipbuilding & Dry Dock Co.* v. *Parker*, 935 F.2d 20, 27 (4th Cir.1991); *Brown* v. *ITT/Continental Baking Co.,* 921 F.2d 289, 294-95 (D.C. Cir.1990); *Brown* v. *Jacksonville Shipyards, Inc*., 893 F.2d 294, 296 (11th Cir.1990).

Upon review, I find that the present case is analogous to *Love* v. *Owens-Corning Fiberglass Co.*, 27 BRBS 148 (1993). In *Lov*e, the claimant, a shipyard insulator, had suffered from shortness of breath and was diagnosed by a doctor in 1976 with asbestosis and markedly reduced pulmonary function. *Id*. at 151. Though the doctor cautioned against further heavy exposure to dust, he stated that there was no contraindication to the claimant continuing to work as an insulator. *Id*. The claimant did not file a claim until 1984 when an attorney who was representing him in third party asbestos litigation advised him to do so. *Id*. On these facts, the BRB held that there was substantial evidence to support the ALJ's finding that the Claimant was not aware of an actual disability that affected his wage-earning capacity until 1984. *Id*. at 151-152. Since the claimant gave notice of his condition to the employer and filed his claim within two years of the date in 1984 when he had knowledge that his wage-earning capacity was impaired by work-related asbestosis, the BRB held that he complied with the requirements of sections 12 and 13. *Id*. at 152. In this case, the Claimant was aware that he had hand symptoms related to his work in the early 1980s, but he never lost any work time and never sought medical treatment until 2000. He was never given any work restrictions and was not diagnosed with CTS until he saw Dr. Meyer in June of 2004. While he testified that Dr. Meyer recommended surgery, Dr. Meyer's records do not bear this out, and the first surgical recommendation was made by Dr. Weiss on August 16, 2005. EX 1 at 2. Therefore, I find that the Claimant was aware of the full character, extent, and impact of his injury on August 16, 2005 when the record shows that he knew (1) that he had been diagnosed with CTS, (2) that his CTS was related to his use of pneumatic and vibratory tools, and (3) that the CTS might require surgery and, thus, impair his wage-earning capacity if he had to take time off from work to undergo surgery. Since his claim for compensation was dated June 14, 2004 (EX 8), I find that the Claimant satisfied the notice and filing requirements of the Act.[14]

[14] With the filing of the claim, the Employer had notice by no later than June 14, 2004. Assuming that Dr. Meyer did recommend surgery, the earliest date on which the Claimant could have been aware that his hand condition was disabling for section 12 and 13 purposes would have been no earlier than June of 2004 when he had his first

E. Causation

A claimant seeking eligibility for benefits must establish a prima facie case which triggers the presumption under 33 U.S.C. § 920(a) that his injury was caused by his employment. *Bath Iron Works Corp*. v. *Preston and Director, Office of Workers' Compensation Programs,* 380 F.3d 597, 602 (1st Cir. 2004) (Preston). The First Circuit has held that to establish a prima facie claim,

> [A] claimant need not affirmatively establish a connection between work and harm. Rather, a claimant has the burden of establishing only that (1) the claimant sustained physical harm or pain and (2) an accident occurred in the course of employment, or conditions existed at work, which could have caused the harm or pain.

Id. The opposing party, to effectively rebut the presumption, must present substantial evidence which severs or proves the absence of a connection between the harm and the working conditions. *Id*. If the employer introduces substantial evidence severing the causal connection between an injury and a claimant's working conditions, the presumption falls out of the case. *Id*. The claimant then bears the burden of showing, based on the record as a whole that his injury was caused by his working conditions. *Id*.

1. The Claimant's Prima Facie Case

The Claimant has been diagnosed with CTS by two physicians, and the Employer does not contest the diagnoses. EX 1; EX 7. In addition, the Claimant introduced medical reports and a deposition from Dr. Meyer opining that the Claimant's cumulative history of hand tool and pneumatic tool use, including his welding and grinding work at Electric Boat, contributed to his bilateral CTS. EX 5; EX 7; EX 9. Specifically, Dr. Meyer stated,

> [The Claimant] exhibits symptoms and physical findings consistent with his bilateral carpal tunnel syndrome. He has a long history of exposure that would be responsible on a cumulative basis, back from his original employment in 1978 through his work as a grinder, boat mechanic, and current marine mechanic.

EX 5 at 2. The Claimant has, therefore, submitted evidence that he suffered a harm, CTS, and that conditions existed at Electric Boat which could have caused the harm, which is sufficient to make out a prima facie case. Preston, 380 F.3d at 602. The Claimant's testimony shows that his job duties at Electric Boat required the extensive use of pneumatic tools which caused vibrations, were heavy, and required a strong grip.[15] TR at 24-28. Dr. Meyer testified that work activities such as repetitive hand motions, forceful work with the hands, gripping, and exposure to vibrations can lead to CTS and the Employer did not dispute this testimony. EX 9 at 32-33, 40.

---

appointment with Dr. Meyer. Since the claim was also filed in June of 2004, the Claimant complied with the section 12 and 13 time limits.

[15] This portion of the Claimant's testimony is undisputed.

The Claimant has thus shown that he suffered harm, and that workplace conditions or a workplace accident could have caused, aggravated, or accelerated the harm which is sufficient to invoke the presumption. Therefore, I conclude that the Claimant has successfully invoked the presumption that his CTS is causally related to his employment at Electric Boat.

2. The Employer's Rebuttal

As a consequence of the Claimant's prima facie case, the burden shifts to the Employer, as the party opposing entitlement, to "rebut the presumption with substantial evidence that the condition was not caused or aggravated by his employment." *Bath Iron Works Corp*. v. *Director, OWCP*, 109 F.3d 53, 56 (1st Cir. 1997). Evidence is "substantial" if it is the kind that a reasonable mind might accept as adequate to support a conclusion. *Richardson* v. *Perales*, 402 U.S. 389, 401 (1971); *Sprague* v. *Director, OWCP*, 688 F.2d 862, 865 (1st Cir. 1982). Under the substantial evidence standard, an employer does not have to exclude any possibility of a causal connection to employment, for this would be an impossible burden; it is enough that it produce medical evidence of "reasonable probabilities" of non-causation. *Bath Iron Works Corp*. v. *Director, OWCP*, 137 F.3d 673, 675 (1st Cir. 1998). *See* also *Ortco Contractors, Inc*. v. *Charpentier*, 332 F.3d 283, 289 (5th Cir. 2003) (rejecting requirement that an employer "rule out" causation or submit "unequivocal" or "specific and comprehensive" evidence to rebut the presumption and reaffirming that "the evidentiary standard for rebutting the § 20(a) presumption is the minimal requirement that an employer submit only 'substantial evidence to contrary.'"), cert. denied, 540 U.S. 1056 (2003). As rebuttal, Electric Boat has introduced a medical opinion from Dr. Weiss. EX 1; EX 10. Although the Claimant testified that his examination with Dr. Weiss was very cursory and that there was no discussion of his medical history; TR at 54-55; Dr. Weiss stated that he reviewed the reports and forms from Dr. Meyer as well as the parties' motions for and in opposition to summary decision, and he explained in a letter to the Employer's attorney that his examination was short because the diagnosis was clear and the history was well documented. EX 10. Given this explanation and considering Dr. Weiss's impressive credentials in the specialty area of hand medicine, I find a reasonable mind could accept his opinion as sufficient to rebut the presumption of any causal relationship between the Claimant's CTS and his past employment at Electric Boat.

3. Is causation established by a preponderance of the evidence?

Because the Claimant's prima facie case and invocation of the section 20(a) presumption have been rebutted, the presumption "falls out" of the case, and the administrative law judge must weigh all the evidence and render a decision supported by substantial evidence. *Del Vecchio* v. *Bowers*, 296 U.S. 280, 286-287 (1935). The Claimant ultimately bears the burden of establishing causation by a preponderance of the evidence based on the record as a whole. *Director, OWCP* v. *Greenwich Collieries*, 512 U.S. 267, 277-280 (1994).

As in many cases where the causal relationship between a disease and a worker's employment is in controversy, the parties here have presented competing experts, and the decision comes down to a question of which expert opinion carries the greater weight. I begin the analysis of the opinions from Drs. Meyer and Weiss by considering the doctors' respective qualifications. As discussed above, Dr. Meyer is board-certified in the specialty of occupational

medicine, and he has published at least one article dealing with the incidence of CTS among shipyard workers. Dr. Weiss is an orthopedic surgeon specializing in hand surgery who has extensive experience with CTS. Clearly, Dr. Weiss has the greater expertise in the areas of diagnosis and treatment of CTS, though his advantage over Dr. Meyer on the etiology issue presented herein is somewhat diminished by Dr. Meyer's expertise in occupational disease. If all other considerations were equal, it would be reasonable to give greater deference to the opinion of Dr. Weiss on the basis of his superior medical credentials.

Turning to a comparison of the opinions rendered by Drs. Meyer and Weiss, it is readily apparent that there is more agreement than divergence. Both agree that the Claimant has CTS and that CTS can be caused by repetitive, forceful use of the hands, including the use of vibrating tools, such as the Claimant experienced at Electric Boat and in some of his subsequent employment. The only significant disagreement between the two experts is on the question of whether the Claimant's employment at Electric Boat contributed to his CTS that was first diagnosed in 2004. Dr. Meyer, relying on the Claimant's history that he first developed hand symptoms approximately 20 years prior to 2004, concluded that his work activities at Electric Boat were contributory because CTS is a cumulative trauma disease. Dr. Weiss, on the other hand, relied on the Claimant's responses in the intake questionnaire that his hand symptoms first appeared in 2000 and concluded that there is no medical support for attributing CTS to the Claimant's Electric Boat employment where the symptom did not manifest until 19 years after that employment terminated. In arriving at their divergent opinions, Drs. Meyer and Weiss both relied on certain factual assumptions that are at variance from the facts that I have found to be established by the evidence of record. These discrepancies must be examined to determine their materiality and, consequently, their impact on the credibility of the doctors' opinions.

The first factual mistake concerns the length of the Claimant's employment at Electric Boat. Dr. Meyer assumed that the Claimant was employed at Electric Boat from 1978-1981, roughly two and a half to three years. EX 5 at 1; EX 9 at 24, 31. Dr. Weiss noted in his supplemental letter that the dates of Electric Boat employment were in question and ranged from one to three years. EX 10 at 2. The Claimant's employment records show that the Claimant was hired by Electric Boat on June 30, 1980 and terminated on July 6, 1981. EX 4 at 4. Thus, the credible evidence of record establishes that the Claimant worked at Electric Boat for a few days over one year. Dr. Meyer testified that it generally takes about one year of full-time "hand-intensive" work to develop CTS; TR at 39-41; and that CTS develops from cumulative trauma across an individual's working life. Id. at 34-35. Dr. Weiss stated that a work period of one to three years is "a fairly short interval for the etiologic causation with respect to carpal tunnel syndrome," but he did not contradict Dr. Meyer's assertions that one year of intensive hand work is sufficient to cause CTS and that CTS is a cumulative trauma disease. EX 10 at 2. Since neither physician stated that welding and grinding work of one year's duration could not be considered as contributory to CTS, I find that the doctors' mistaken factual assumptions as to the length of the Claimant's CTS employment are not material.

The second, and more significant, area of factual discrepancy concerns when the Claimant first developed hand symptoms. Dr. Meyer assumed from the oral history that he took from the Claimant at the time of the first appointment in June of 2004 that the Claimant's hand symptoms had persisted for approximately 20 years. Dr. Meyer rejected this history as

unreliable and chose to rely exclusively on the intake questionnaire which indicates that symptoms did not arise until 2000. For the reasons explained earlier in this decision, I find that the credible evidence of record establishes that the Claimant first developed hand symptoms while he was working at Electric Boat and that these symptoms persisted and gradually worsened over years of subsequent manual labor to the point that he eventually sought treatment and was diagnosed with CTS. Accordingly, Dr. Meyer's factual assumptions, while not entirely accurate, are closer to my findings than those of Dr. Meyer. Further, I find it reasonable to draw the following inferences from the doctors' opinions: (1) that Dr. Meyer's conclusion that the Claimant's employment at Electric Boat contributed to his CTS would be strengthened if he had known that the Claimant's hand symptoms developed while he was working at Electric Boat as opposed to a few years later; and (2) that Dr. Weiss likely would have agreed with Dr. Meyer on causation had he not disbelieved the Claimant's history of hand symptoms predating 2004 by approximately 20 years. Therefore, I find that Dr. Weiss's mistaken factual assumption regarding the time when symptoms first developed is material and that his causation opinion must be rejected as contrary to the weight of the evidence.

Having determined that the medical opinion from Dr. Meyer outweighs the contrary opinion from Dr. Weiss, I find that the Claimant has proved by a preponderance of the evidence that his CTS is causally related to his employment at Electric Boat.

F. Maximum Medical Improvement and Permanency

The Claimant seeks an award of permanent partial disability compensation under section 8(c)(3) of the Act based on Dr. Meyer's assessment of a six percent right and a three percent left hand impairment under the AMA Guides. Cl. Br. at 17-22. The Employer argues that the claim for section 8(c)(3) benefits must be denied because Dr. Weiss (and Drs. Meyer and Campanile according to the Claimant's testimony) have recommended CTS surgery which precludes a determination that the Claimant has reached a point of maximum medical improvement. Emp. Br. at 11-12.

"To be considered permanent, a disability need not be 'eternal or everlasting;' it is sufficient that the 'condition has continued for a lengthy period, and it appears to be of lasting or indefinite duration, as distinguished from one in which recovery merely awaits a normal healing period.'" *Air America, Inc*. v. *Director, OWCP*, 597 F.2d 773, 781 (1st Cir. 1979) (quoting *Watson* v. *Gulf Stevedore Corp*., 400 F.2d 649, 654 (5th Cir. 1968)). A possibility of future surgery does not preclude a finding that a condition is permanent; *Worthington* v. *Newport News Shipbuilding & Dry Dock Co.*, 18 BRBS 200, 202 (1986); and the BRB has held that a physician's opinion that a condition will progress and ultimately require surgery, but also giving a percentage disability rating, supports a finding that maximum medical improvement has been reached, if the disability will be lengthy, indefinite in duration, and lack a normal healing period. *Morales* v. *General Dynamics Corp.,* 16 BRBS 293, 296 (1984), aff'd in pert. part sub nom. *Director, OWCP* v. *General Dynamics Corp*., 769 F.2d 66 (2d Cir. 1985). *See* also *Bunge Corp.* v. *Carlisle*, 227 F.3d 934, 940 (7th Cir. 2000). Certainly, the Claimant's CTS has persisted over a lengthy period of time and appears to be a condition of indefinite duration. Though Dr. Weiss had indicated that the Claimant "will require carpal tunnel release surgery in the future" (EX 1 at 2), there is no specific medical recommendation for surgery in the record, and Dr. Meyer has

specifically recommended against surgery at the present time.[16] On these facts, and noting that the Employer has offered no evidence contradicting Dr. Meyer's permanent impairment assessment, I conclude that this case is comparable to Morales and that a finding of permanency is warranted. I further conclude that the date of permanency is April 7, 2005 when Dr. Meyer assigned the Claimant the permanent impairment ratings.

G. Last Responsible Maritime Employer and Liability for Benefits

As Electric Boat has introduced no evidence to demonstrate that it was not the Claimant's last maritime employer covered by the Act to expose the Claimant to injurious stimuli, it is liable for any benefits awarded notwithstanding the fact that the Claimant's subsequent non-maritime employment also contributed to and most likely worsened his CTS. *Todd Shipyards Corp*. v. *Black*, 717 F.2d. 1280 (9th Cir. 1983), cert. denied 466 U.S. 937 (1984); *Stilley* v. *Newport News Shipbuilding and Dry Dock Co*., 33 BRBS 224, 225-26 (2000), petition for review denied sub nom *Newport News Shipbuilding and Drydock Co*. v. *Stilley*, 243 F.3d 179 (4th Cir. 2001). *See* also *Liberty Mutual Ins. Co*. v. *Commercial Union Ins. Co*., 978 F.2d 750, 756 (1st Cir. 1992).

Since the Employer has not introduced any evidence contradicting Dr. Meyer's permanent impairment assessment, I find that the Claimant is entitled to an award of permanent partial disability compensation under section 8(c)(3) of the Act which provides for compensation at two-thirds of the worker's average weekly wage for 244 weeks. 33 U.S.C. § 908(c)(3). In a case where the loss is partial, compensation is based on the proportionate loss or loss of use of the member. 33 U.S.C. § 908(c)(19). That is, the percentage of the Claimant's loss of use of his hands must be applied to the number of weeks set forth in section 8(c)(3) to arrive at the proportionate number of weeks of compensation. *See Nash* v. *Strachan Shipping Co*., 15 BRBS 386, 391-92 (1983), aff'd in relevant part but rev'd on other grounds, 760 F.2d 569, (5th Cir. 1985), aff'd on recon. en banc, 782 F.2d 513 (1986). Accordingly, I conclude that the Claimant is entitled to an award of permanent partial disability compensation at two-thirds of the stipulated average weekly wage ($197.64) for a total of 21.96 weeks (6% of 244 weeks for the right arm and 3% of 244 weeks for the left arm). Payments will commence on April 7, 2005 which is the date of maximum medical improvement and pre-judgment interest will be assessed on any compensation payments that were not timely made. *See Foundation Constructors* v. *Director, OWCP*, 950 F.2d 621, 625 (9th Cir.1991) (noting that "a dollar tomorrow is not worth as much as a dollar today" in authorizing interest awards as consistent with the remedial purposes of the Act). *See* also *Quav*e v. *Progress Marine*, 912 F.2d 798, 801 (5th Cir.1990), reh'g denied 921 F. 2d 273 (1990), cert. denied, 500 U.S. 916 (1991). The appropriate interest rate shall be determined pursuant to 28 U.S.C. § 1961 (2003) as of the filing date of this decision and order with the District Director.

[16] In cases where "the patient is faced with two or more valid medical alternatives, it is the patient, in consultation with his own doctor, who has the right to chart his own destiny." *Amos v. Director, Office of Workers' Compensation Programs*, 153 F.3d 1051, 1053 (9th Cir. 1998) (citing 1 Arthur Larson & Lex K. Larson, Larson's Workers' Compensation Law § 13.22(e) (1998) ("In general, if claimant gets conflicting instructions on treatment from different doctors, and chooses to follow his or her own doctor's advise, this is not unreasonable.")), *amended*, 164 F.3d 480 (9th Cir. 1999).

As the last responsible maritime employer, the Employer is also liable for all medical expenses reasonably and necessarily incurred by the Claimant in connection with his work-related CTS. *Bath Iron Works Corp*. v. *Director, OWCP*, 244 F.3d 222, 229 (1st Cir. 2001); *Romeike* v. *Kaiser Shipyards*, 22 BRBS 57, 59 (1989). In addition, the Employer will be ordered to reimburse the Claimant for any payments already made for medical bills reasonably and necessarily incurred in connection with his work-related CTS.

H. Section 26

The Employer has raised a claim that it is entitled to an award of costs under section 26 of the Act which provides for assessment of costs against a party who institutes or continues a proceeding without reasonable grounds. 33 U.S.C. § 926. Three words dispose of this issue: the Claimant prevailed.

I. Attorney's Fees

Having successfully established his right to compensation and medical benefits through the services of an attorney, the Claimant is entitled to an award of attorney's fees under section 28 of the LHWCA. *See Lebel* v. *Bath Iron Works*, 544 F.2d 1112, 1113 (1st Cir. 1976). The Claimant's attorney had applied for fees totaling $10,140.00 based on 42.25 hours of services, and the Employer has filed a limited objection, urging denial of four hours billed on May 24, and 29, 2006 for legal research.[17] In support of its objection, the Employer points out that the Claimant's attorney previously billed three hours for legal research on similar issues raised in the Employer's motion for summary decision, and it asserts that while its section 26 argument was novel, "a two minute review of the statute" would have been sufficient for any legal research on this issue. Emp. Obj. at 1. The Claimant's attorney responds his legal research on that dates in question covered a range of issues, including the law on credibility and the section 20(a) presumption, and that the Employer's section 26 claim required "some time" to researd since it was novel. Cl. Resp. at 1-2. The Claimant's attorney also amended his fee application to seek fees for an additional two hours work in reviewing and responding to the Employer's objection.

The regulations governing awards of fees to prevailing claimants under the Act provide that "[a]ny fee approved shall be reasonably commensurate with the necessary work done and shall take into account the quality of the representation, the complexity of the legal issues involved, and the amount of benefits awarded . . . ." 20 C.F.R. § 702.132(a) (2004). *See* also *Parks* v. *Newport News Shipbuilding and Dry Dock Co*., 32 BRBS 90, 96 (1998) (claimant has burden to produce a fee petition supported by a complete statement of the extent and character of the necessary work done). Thus, a party seeking an award of fees under the fee shifting provisions of a statute such as the LHWCA bears the burden of establishing the necessity of claimed attorney services. *Hensley* v *Eckerhart*, 461 U.S. 424, 437 (1983) (Hensley); *Roach* v. *New York Protective Covering Co*., 16 BRBS 114, 116 (1984). The proper test for determining whether work performed by an attorney was necessary is not whether the Court or opposing

[17] The Employer's objection stated that the challenged legal research was done on May 24 and 26, 2006, but the Claimant's attorney correctly points out in his response that the research was performed on May 24 and 29, 2006. The legal research in question was performed in connection with the preparation of the Claimant's post-hearing brief.

counsel can discern with the benefit of hindsight a direct nexus between every service rendered and the compensation ultimately awarded, but whether the attorney could have reasonably regarded the work as necessary to establish entitlement at the time that the work was actually performed. *Cabral* v. *General Dynamics Corp*., 13 BRBS 97, 100 (1981). In my view, some legal research in preparation for filing a post-hearing brief clearly could have been considered necessary even if the Claimant's attorney had previously done similar research in responding to the Employer's motion for summary decision. Further, the Claimant's attorney can hardly be faulted for conducting research to respond to the Employer's claim for section 26 costs. That said, I find that four hours for additional legal research, on the heels of three hours of prior legal research, is a little excessive for this case which presented no unusual or novel legal issues aside from the section 26 claim which obviously had no merit. Therefore, I will sustain the objection in part and disallow two hours of legal research time. Since the Claimant was partially successful in defending his fees, I will allow one additional hour for reviewing the Employer's objection and drafting a response. In sum, I finds that the fee application complies with the requirements of 20 C.F.R. § 702.132(a) and that attorney's fees in the amount of $9,900 are reasonably commensurate with the necessary work done, taking into account the quality of representation, the complexity of the legal issues involved and the amount of benefits awarded.

IV. Order

Based upon the foregoing Findings of Fact and Conclusions of Law and upon the entire record, the following compensation order is entered:

1. Electric Boat Corporation shall pay to the Claimant permanent partial disability benefits pursuant to 33 U.S.C. § 908(c)(3) and (19) for the work-related loss of use of his hands for a period of 21.96 weeks at the rate of $197.64 per week commencing on April 7, 2005, plus interest on all past due compensation, computed from the date each payment was originally due until paid, and the appropriate rate shall be determined pursuant to 28 U.S.C. § 1961 (2003) as of the filing date of this Decision and Order with the District Director;

3. Electric Boat Corporation shall provide the Claimant with all necessary medical care pursuant to 33 U.S.C. § 907 for his work-related carpal tunnel syndrome, and it shall reimburse the Claimant for any payments already made for such necessary medical care;

4. Electric Boat Corporation shall pay the Claimant's attorney, Lance G. Proctor, LLC, attorney's fees and costs in the amount of $9,900.00; and

5. All computations of benefits and other calculations which may be provided for in this Order are subject to verification and adjustment by the District Director.

SO ORDERED.

A

DANIEL F. SUTTON
Administrative Law Judge

Boston, Massachusetts